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S.B., Appellant)	
)	
and)	Docket No. 21-0989
)	Issued: May 11, 2022
U.S. POSTAL SERVICE, SHELBY TOWNSHIP)	
POST OFFICE, Shelby Township, MI, Employer)	
)	

Case Submitted on the Record

Office of Solicitor, for the Director

Before:
ALEC J. KOROMILAS, Chief Judge
PATRICIA H. FITZGERALD, Deputy Chief Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

On June 16, 2021 appellant, through counsel, filed a timely appeal from a March 17, 2021 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act² (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.³

² 5 U.S.C. § 8101 *et seq.*

³ The Board notes that, following the March 17, 2021 decision, OWCP received additional evidence. However, the Board's *Rules of Procedure* provides: "The Board's review of a case is limited to the evidence in the case record that was before OWCP at the time of its final decision. Evidence not before OWCP will not be considered by the Board for the first time on appeal." 20 C.F.R. § 501.2(c)(1). Thus, the Board is precluded from reviewing this additional evidence for the first time on appeal. *Id.*

ISSUE

The issue is whether OWCP met its burden of proof to terminate appellant's entitlement to wage-loss compensation and medical benefits, effective January 21, 2018 due to the accepted condition of torn medial meniscus of the left knee, and effective February 24, 2021 due to the accepted condition of temporary aggravation of left knee osteoarthritis.

FACTUAL HISTORY

This case has previously been before the Board.⁴ The facts of the case as presented in the Board's prior decision are incorporated herein by reference. The relevant facts are as follows.

On September 21, 2017 appellant, then a 52-year-old letter carrier, filed a notice of recurrence (Form CA-2a) alleging that on September 11, 2017 he sustained a recurrence of his August 28, 2006 left knee injury under OWCP File No. xxxxxx779.⁵ He stopped work on September 20, 2017.

On October 5, 2017 OWCP determined that appellant had identified new work factors as the cause of his alleged conditions. Accordingly, it administratively converted his recurrence claim to a new occupational disease claim (Form CA-2) assigned OWCP File No. xxxxxx408.

By decision dated November 28, 2017, OWCP denied appellant's occupational disease claim, finding that the medical evidence of record was insufficient to establish a causal relationship between appellant's diagnosed left knee conditions and the accepted factors of his federal employment.

On April 18, 2018 appellant, through counsel, requested reconsideration. By decision dated September 14, 2018, OWCP denied modification of the November 28, 2017 decision.

On March 6, 2019 appellant, through counsel, requested reconsideration and submitted additional medical evidence.

In a report dated February 20, 2019, Dr. Neil Allen, a Board-certified internist, reviewed statements from appellant detailing his work duties and medical history. He also noted review of an October 25, 2017 report from Dr. Steven Plomaritis, an osteopath specializing in orthopedic surgery, which discussed the results of x-rays and a diagnostic ultrasound. Dr. Allen opined that Dr. Plomaritis had provided adequate history and findings to support a diagnosis of permanent aggravation of unilateral primary osteoarthritis of the left knee. He opined that appellant's full-time schedule as an aging letter carrier combined with the repetitive loading required by the position (climbing out of a vehicle, climbing stairs and curbs, walking, standing, and pushing and pulling) would result in a greater amount of degeneration than what could be restored by the body. Dr. Allen indicated that the result of this incomplete regeneration was destruction/disruption of cartilage, reduction of joint space (primary and patellofemoral), and bony destruction/deformity.

⁴ Docket No. 19-1778 (issued October 23, 2020) (Alec J. Koromilas, Chief Judge, dissenting).

⁵ Appellant's claim under OWCP File No. xxxxxx779 was never formally adjudicated. His claims have not been administratively combined by OWCP.

As such, he found that the repetitive wear associated with appellant's work duties resulted in the permanent aggravation of appellant's underlying arthritic condition. Dr. Allen reported that the aggravation was permanent because current treatments for osteoarthritis provided only temporary relief and not full resolution of the underlying condition.

By decision dated June 4, 2019, OWCP denied modification of the September 14, 2018 decision.

On August 23, 2019 appellant, through counsel, filed a timely appeal to the Board. By decision dated October 23, 2020,⁶ the Board set aside OWCP's June 4, 2019 decision and remanded the case for further development. The Board found that, while Dr. Allen's February 20, 2019 opinion was not fully rationalized and was insufficient to meet appellant's burden of proof to establish causal relationship, it was sufficient, in the absence contrary evidence, to require further development of the record.

On November 6, 2020 OWCP prepared a statement of accepted facts (SOAF) and referred appellant, along with a series of questions and the case record, to Dr. Khaled J. Saleh, a Board-certified orthopedic surgeon, for a second opinion evaluation.

In a February 24, 2021 report, Dr. Saleh related a history of injury and medical treatment. He indicated that appellant's diagnostic studies and physical examination findings correlated with his clinical impression of left knee medial meniscal tear, which he opined that appellant had sustained because of his letter carrier activities. Dr. Saleh described appellant's daily work duties as a letter carrier and noted that appellant's first left knee symptoms of gradual worsening pain and swelling, had occurred over a period of approximately one week and following an especially large volume of package deliveries on September 11, 2017. He noted that appellant's left knee x-rays and diagnostic ultrasound from October 25, 2017 confirmed medial compartment bone on bone osteoarthritis and that a December 12, 2017 left knee magnetic resonance imaging (MRI) scan revealed a medial meniscal tear. Dr. Saleh related that arthroscopic surgery was recommended, which appellant underwent on January 20, 2018.⁷ He noted that appellant's current objective finding of mild joint line tenderness was consistent with his subjective complaint of intermittent left knee medial-sided pain, which typically arose from an osteoarthritis diagnosis. Dr. Saleh opined that appellant's left knee medial meniscus tear and chondral lesion had resolved when treated surgically on January 20, 2018. He indicated that appellant's left knee unilateral primary osteoarthritis arose from his 1986 left knee injury, which resulted in a complex multi-ligamentous reconstruction and was likely multifactorial. Dr. Saleh opined that the work injury temporary aggravated appellant's preexisting left knee unilateral primary osteoarthritis and that the underlying osteoarthritis received appropriate conservative treatment, including physical therapy and therapeutic exercise along with the use of a stabilizing brace during prolonged ambulation. He explained that appellant's disability period that began on September 20, 2017 did not extend past April 20, 2018 (which represented a three-month period of recovery and physical therapy following the January 20, 2018 left knee surgery). Dr. Saleh concluded that appellant was

⁶ See *supra* note 4.

⁷ This consisted of medial meniscectomy, medial and patellofemoral chondroplasty and infiltration of concentrated marrow cells for possible stress fracture of the medial tibial plateau and the medial femoral condyle.

capable of returning to his position as letter carrier without restrictions, and that he had already done so.

By decision dated March 17, 2021, OWCP accepted appellant's claim for torn left knee medial meniscus, resolved as of January 21, 2018 and temporary aggravation of preexisting left knee osteoarthritis, resolved as of February 24, 2021. It related that, as both conditions had resolved, appellant's claim was closed upon acceptance. However, OWCP further noted that if appellant lost time from work due to the accepted conditions, he could claim compensation using a claim for compensation (Form CA-7).

LEGAL PRECEDENT

Once OWCP accepts a claim and pays compensation, it has the burden of proof to justify modification or termination of an employee's benefits.⁸ The right to medical benefits for an accepted condition is not limited to the period of entitlement to compensation for disability.⁹ To terminate authorization for medical treatment, OWCP must establish that the employee no longer has residuals of an employment-related condition that require further medical treatment.¹⁰

OWCP's burden of proof in terminating compensation includes the necessity of furnishing rationalized medical opinion evidence based on a proper factual and medical background.¹¹

ANALYSIS

The Board finds that OWCP met its burden of proof to terminate appellant's entitlement to wage-loss compensation and medical benefits, effective January 21, 2018, due to the accepted condition of torn medial meniscus of the left knee.

On remand from the Board's October 23, 2020 decision, OWCP referred appellant to Dr. Saleh for a second opinion evaluation. In his February 24, 2021 report, Dr. Saleh described appellant's daily work duties as a letter carrier and noted that appellant's first left knee symptoms of gradual worsening pain and swelling, had occurred over a period of approximately one week and following an especially large volume of package deliveries on September 11, 2017. He noted that appellant's left knee x-rays and diagnostic ultrasound from October 25, 2017 confirmed medial compartment bone on bone osteoarthritis and that a December 12, 2017 left knee MRI scan revealed a medial meniscal tear. Dr. Saleh related that arthroscopic surgery was recommended, which appellant underwent on January 20, 2018. He opined that appellant's left knee medial meniscus tear had resolved when it was surgically treated on January 20, 2018. Dr. Saleh also noted that appellant's current objective findings of mild joint line tenderness was consistent with

⁸ *S.P.*, Docket No. 19-0196 (issued June 24, 2020); *D.G.*, Docket No. 19-1259 (issued January 29, 2020); *S.F.*, 59 ECAB 642 (2008); *Kelly Y. Simpson*, 57 ECAB 197 (2005); *Paul L. Stewart*, 54 ECAB 824 (2003).

⁹ *S.P.*, *id.*; *J.W.*, Docket No. 19-1014 (issued October 24, 2019); *L.W.*, Docket No. 18-1372 (issued February 27, 2019).

¹⁰ *Id.*

¹¹ *D.G.*, *supra* note 8; *M.C.*, Docket No. 18-1374 (issued April 23, 2019); *Del K. Rykert*, 40 ECAB 284, 295-96 (1988).

an osteoarthritis diagnosis. His conclusion is sound, rational, and logical and is supported with sufficient medical rationale that it is accorded the weight of the medical evidence. As the weight of the medical evidence establishes that the accepted left knee medial meniscus tear had resolved with no residuals on January 20, 2018, the Board finds that OWCP has met its burden to justify the termination of compensation for this medical condition. The Board will therefore affirm OWCP's termination of appellant's medical benefits effective January 21, 2018 with regard to the accepted condition of torn left knee medial meniscus.¹²

With regard to the accepted temporary aggravation of left knee osteoarthritis, the Board finds that OWCP did not meet its burden of proof. Dr. Saleh opined in his February 24, 2021 second opinion report, that the work injury had temporarily aggravated appellant's preexisting left knee unilateral primary osteoarthritis which resolved on April 20, 2018, after a three-month period of recovery and physical therapy following the January 20, 2018 left knee surgery. In his February 20, 2019 report, Dr. Allen opined that the repetitive wear associated with appellant's work duties resulted in the permanent aggravation of appellant's underlying arthritic condition. He explained that the aggravation was permanent because current treatments for osteoarthritis provided only temporary relief and not full resolution of the underlying condition. Dr. Allen also opined that his review of Dr. Plomaritis' October 25, 2017 report, which discussed the results of x-rays and a diagnostic ultrasound, contained adequate history and findings to support a diagnosis of permanent aggravation of unilateral primary osteoarthritis of the left knee. A conflict therefore exists in medical opinion evidence between Dr. Allen, the treating physician, and Dr. Saleh, the second opinion physician. As this conflict remains unresolved, the Board finds that OWCP did not meet its burden to justify the termination of appellant's entitlement to wage-loss compensation and medical benefits effective February 24, 2021 due to the accepted condition of temporary aggravation of left knee osteoarthritis.

CONCLUSION

The Board finds that OWCP met its burden of proof to terminate appellant's entitlement to wage-loss compensation and medical benefits effective January 21, 2018 for the accepted condition of torn left knee medial meniscus, but did not meet its burden of proof to terminate appellant's entitlement to wage-loss compensation and medical benefits effective February 24, 2021 for the accepted condition of temporary aggravation of left knee osteoarthritis.

¹² *V.D.*, Docket No. 19-0979 (issued February 5, 2020); *T.W.*, Docket No. 18-1573 (issued July 19, 2019); *M.C.*, Docket No. 18-1199 (issued April 5, 2019); *see also A.C.*, Docket No. 16-1670 (issued April 6, 2018); *D.S.*, Docket No. 13-228 (issued July 12, 2013).

ORDER

IT IS HEREBY ORDERED THAT the March 17, 2021 decision of the Office of Workers' Compensation Programs is affirmed in part and reversed in part.

Issued: May 11, 2022
Washington, DC

Alec J. Koromilas, Chief Judge
Employees' Compensation Appeals Board

Patricia H. Fitzgerald, Deputy Chief Judge
Employees' Compensation Appeals Board

Valerie D. Evans-Harrell, Alternate Judge
Employees' Compensation Appeals Board